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International Guarantees

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SECRET

INTERNATIONAL GUARANTEES

I. Introduction

This paper examines the role of "international guarantees" in a Viet-Nam settlement. It identifies the major principles of a U.S. position on this matter for background use in consultations with the GVN and in the negotiations at Paris.

Any overall settlement which is arrived at will have to consist of a set of primary arrangements between the two sides in which they assume direct obligations with respect to such issues as cease-fire, withdrawal, the DMZ and internal political settlement.* The settlement may also provide for machinery to verify compliance with its terms. Finally, the substantive arrangements may be the subject of "international guarantees", a set of secondary arrangements involving an international organization or a group of nations. The general purpose of the international guarantees would be to provide additional reason to believe that the primary arrangements will be carried out. In order to serve this purpose one or more parties to the primary arrangement could also be parties to the guarantee agreement.

* It is not clear just which parties would sign the primary arrangements. The most likely possibility perhaps is that four parties would sign -- the GVN, the DRV, the PRG and the U.S. Another possibility is an arrangement between the GVN and the PRG which the DRV and the U.S. would separately undertake to respect. Other permutations are also possible. The parties to the primary arrangements, whoever they may be, will hereafter be referred to as the primary parties.

SECRET

~~SECRET~~
2

The analysis of the role of international guarantees presented in this paper will avoid, to the extent possible, discussion both of the substantive features of a settlement and of verification machinery. The latter subjects are dealt with in separate papers.

II. Specific Purposes Of International Guarantees

International guarantees can serve the following specific purposes:

- 1) Commit a number of countries to respect the basic terms of the settlement and to desist from any inducement to the primary parties to break their commitments.

- 2) Provide inducements for compliance and deterrents to violation so far as both the primary and guarantor parties are concerned.

- 3) Generalize the responsibility for seeing that the settlement arrangements are fulfilled so that the whole burden does not rest on any one power.

III. Assumptions

The analysis contained in this paper is based on the following assumptions:

- 1) Neither the United States nor any other country will commit itself in advance to use military force in Vietnam, either individually or collectively, to insure compliance with the terms of a settlement, nor will an international police force be available for this purpose.

~~SECRET~~

SECRET

3

This assumption may well not be shared by the GVN at this time. There have been indications that what the GVN means by "international guarantee" is precisely a definite military commitment from the United States. This may become a principal issue in any consultations with the GVN.

2) Nations will not agree in advance to any kind of automatic reaction in the event of a certified violation. Rather, the guarantor nations will reserve to themselves the decision as to what actions, if any, to take in the context of a particular situation.

3) Arrangements for verification and arrangements for international guarantees are related but can be analyzed separately. Should effective verification machinery be established, it could contribute materially to the functioning of the international guarantees. However, guarantor nations can refuse to take effective action even in the face of indisputable reports of violations produced by the verification body; contrawise, in the event of manifest violations guarantor nations can also have the will to act even in the absence of reports from a verification body.

4) The stability of a settlement will depend principally on the willingness of the parties directly concerned to carry out their obligations. However, the agreement of other nations to respect the settlement and the possibility of their bringing pressure to bear on both the primary parties and each other to abide by the settlement

SECRET

can make a significant contribution to the chances for fulfillment of the terms of the settlement.

5) South Viet-Nam will retain the right of self-defense, including the right to appeal to other nations for assistance.

IV. Sanctions Available

1. Reciprocity

The primary sanction for a material breach by one party of the terms of an over-all settlement is the right of other parties that are specifically affected by the breach to suspend the performance of their obligations. This sanction can be an effective deterrent only so long as the parties continue to believe the settlement to be on the whole in their best interests. Once a material breach occurs, the right of reciprocity provides a basis for active sanctions, such as those of a military nature, that would otherwise be prohibited by the settlement.

So far as relations among the primary parties are concerned, the sanction of reciprocity does not depend on guarantee arrangements. However, guarantee arrangements would place the primary parties on notice that the guarantor powers would be entitled to take steps contrary to their obligations in the event of a breach of a relevant obligation by one of the primary parties.

Similarly, the guarantor nations could be inhibited

SECRET
5

by the threat of reciprocity from interfering with the settlement. For example, U.S. military activity in Laos is justified under the 1962 Geneva Agreements on the basis of North Viet-Nam's antecedent and continuing violations of Laotian neutrality.

2. Publicity

The threat of exposure can inhibit violations of an agreement. To some extent the task of exposure could be carried out by the verification body and by its supervisory council, if any. However, guarantor arrangements can help provide further publicity which can cause the violator to draw back and can deter future violations.

3. Diplomatic Sanctions

Nations may break diplomatic relations as a punitive measure. However, this sanction obviously has limited effectiveness where, as in the Viet-Nam situation, major concerned parties have at many times in the past had no diplomatic relations.

4. Economic Sanctions

Economic sanctions can include the interruption of economic assistance, trade boycotts, and severance of transportation and communication links. The history of the use of these measures indicates that they require near-unanimous compliance by the countries having major links in order to be effective. This would be most unlikely in the Viet-Nam context.

SECRET

SECRET
6

5. Military Sanctions

Military sanctions may include the provision of materiel, training, advice, and logistical support to indigenous forces beyond what is provided for in the settlement itself and the direct use of combat forces, including naval and air power and ground troops. Force may be applied lawfully against the territory of another state when necessary in individual or collective self-defense against armed attack or when decided upon by the UN Security Council. In any case, agreement among all the guarantor powers upon imposition of military sanctions is not to be expected in the Viet-Nam context, and action by a few guarantors in the absence of unanimity would require grave provocation.

V. Requirements of Guarantee Arrangements

1. The Instrument

a. Form

Guarantee arrangements require expression in a document or instrument. There are several possible varieties:

1) A formal international agreement, such as the Declaration and Protocol of the Declaration on the Neutrality of Laos. The Royal Government of Laos made a Statement of Neutrality; the other Governments represented at the Geneva Conference of 1962 took note of this statement, agreed to respect it and to consult with one another in the event of its violation. Both the Declaration and the Proto-

SECRET

~~SECRET~~

7

col, which is in the more traditional agreement form and provides for the implementation of the basic arrangement, were signed by members of the Conference.

2) A Conference Declaration, such as the Final Declaration of the Geneva Conference of 1954. The Declaration was by the Conference itself and was not signed by the Governments represented. The Declaration referred to the only signed documents -- the agreements signed by the military commanders ending hostilities and organizing international control and supervision machinery. The members of the Conference agreed in the Declaration to consult one another on any question referred to them by the International Supervisory Commission.

3) A UN Security Council Resolution endorsing the arrangements and calling upon all states to respect them.

Of these three forms, a formal signed international agreement would most clearly place responsibility on the parties; a general unsigned conference declaration would suggest more amorphous responsibilities; and a Security Council Resolution would diffuse the responsibilities even further, although the permanent members of the Security Council might feel some special responsibility.

It would be in the interest of the United States to have the guarantor nations feel specific responsibility for the success of a Viet-Nam settlement. Therefore, the formal international agreement would be the most desirable

~~SECRET~~

SECRET

8

of the three alternatives, with the Conference declaration second. A UN Security Council guarantee, instead of either of the other two possibilities, is not recommended for the following reasons:

-- It would impose the least degree of individual responsibility of the three alternatives.

-- The Security Council is already charged with responsibility for the maintenance of international peace and security. Endorsement of the settlement would be useful in instilling a feeling of additional responsibility with respect to Viet-Nam but is not essential to the UN's possible future involvement.

-- North Viet-Nam and Communist China, as well as South Viet-Nam, are not members of the UN. Even if these three powers were to become UN members, North Viet-Nam and Communist China would probably regard Viet-Nam as being beyond the UN's proper concerns. This attitude would inhibit the Soviet Union's willingness to act in the UN context, although its willingness to act in any context is questionable.

However, a Security Council Resolution might be considered for use as a supplement to the guarantees contained in an international agreement or Conference declaration, particularly if the verification machinery were under UN control. This would have the advantage of attaching the UN's

SECRET

SECRET
9

prestige to the settlement, might make future UN action and wider participation in international sanctions somewhat easier, and might make it easier for such countries as Japan and Indonesia to be active.

b. Parties

Parties to the guarantee arrangements should include the following:

1) All those who might have the incentive and the leverage effectively to influence, positively or negatively, compliance with the primary arrangements.

2) States whose participation would make more likely the prospect of effective action in the event of a violation.

3) States that could play a useful bridging role between the opposing powers.

The roster of States party to the 1962 Laos Agreements (which includes all those present at the 1954 Geneva Conference and a few others) provides an obvious starting point. These are, besides the Vietnamese states, Burma, Cambodia, Canada, PRC, France, India, Laos, Poland, Thailand, USSR, U.K., and U.S. Canada, India, and Poland had status as the members of the International Control Commission. Their position could be reconsidered if a new verification body was otherwise constituted. The troop-contributing countries in Viet-Nam that were not represented at the 1962 Conference -- Australia, New Zealand, Republic of Korea and possibly the

SECRET

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10

Philippines -- might also be interested in participating in the guarantee arrangements. The addition of other countries such as Japan, Indonesia, Malaysia, Singapore and Pakistan might also be considered. However, a "balanced" list of participants will be important in securing the other side's agreement to the arrangement.

The participation by Asian nations such as those listed above has the obvious advantage of bringing together those nations most intimately concerned with the peace and security of Southeast Asia. It also places the major responsibility for peace in Asian hands and facilitates, by the facts of geography, the consultation and quick responsiveness that may be required.

Inclusion of such militants as Communist China among the guarantor powers raises the issue of whether their presence might detract from the willingness of the other parties to take vigorous action in the event of violations. However, inclusion of Communist China could be a factor in inducing China not to disrupt the settlement. In any event, it does not seem feasible to exclude China if she wishes to be included.

Moreover, there presumably would not be and should not be any requirement of unanimity among the parties before any action could be taken by guarantor parties. A group of guarantor powers smaller than the entire membership could

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II

agree among themselves on steps to be taken in response to violations notwithstanding the attitude of other parties.

2. A Forum

A forum in which violations can be brought up for discussion implements the sanction of exposure beyond what can be achieved by a report of the verification body. It also provides a procedure through which to seek additional sanctions or negotiate a return to the settlement.

The UN Security Council is a standing forum in which threats to the peace can be raised. The Council would be available for this purpose independent of the terms of a guarantee arrangement. However, assuming the verification machinery is not under UN control, the Security Council is not the best forum one can imagine because of the fact that the two Viet-Nams and Communist China are not UN members, because there would be a natural reluctance to take low-level violations to the Security Council, because the members of the Security Council might not feel any special responsibility regarding Viet-Nam, and because of the availability of the veto.

Provision for another forum, composed of the guarantor powers, is therefore desirable.

The Final Declaration of the 1954 Geneva Conference provided only that the parties agreed to "consult one another" on matters referred by the International Supervisory Commission. No machinery for this consultation was

~~SECRET~~

SECRET
12

established. The 1962 Agreements in Laos established merely the mechanism of the British and Soviet Co-Chairmen, who were given general powers of supervision and the duty to keep the parties informed of developments.

New guarantor arrangements should provide a readier forum. A particular body of representatives might be designated, as, for example, the chief diplomatic representatives of the Parties resident at Paris. Provision might be made for them to meet on the call of either one of the Co-Chairmen of a new Conference, instead of both, or upon a petition of a certain proportion (perhaps one-third) of the guarantor powers.

The group's function would be to:

- 1) provide a vehicle for conciliation of the parties;
- 2) recommend methods for settling disputes;
- 3) dramatize violations reported by the verification body or charged by the parties;
- 4) consult on measures for restoring compliance with the settlement; and
- 5) recommend actions that the guarantors might take in response to a violation.

There should be no veto available against convening the body, or on the subjects of its deliberations. We should also try to avoid a veto power over the recommendations of the body, though that will be difficult to achieve. Pre-

SECRET

~~SECRET~~

13

ferably its actions would be taken by majority vote.

The body's recommendations would not be binding on the parties. (We could not get agreement on any other arrangement.) However, a government that wished to take action against a violation could do so more easily on the basis of a multilateral recommendation emanating from such a forum, particularly if the actions could be taken in concert with the recommending powers. The prospect then of recommendations for action obtaining the support of a majority of the group with a few of the powers being prepared to act could itself deter violations.

The nature of the guarantee forum must depend to some extent on the verification arrangements that are established. If an international supervisory council, as suggested by the paper on verification in this series, is established to provide guidance to the verification field force then the council might also serve as the forum of the guarantee powers.

Should a large supervisory council be established compromising all the important powers, there would be little reason to establish a separate guarantee forum. On the other hand, if a small supervisory council is established in which the major powers are not represented, it could hardly double as the guarantee forum. A separate body would have to be established for the latter purpose and the relationship worked out between the supervisory council and the guarantee forum. Presumably, reports of violations would ordinarily first be

SECRET

~~SECRET~~
14

aired in the supervisory council and then, if the seriousness of the situation required, the guarantee forum would be convened to consider possible action.

If the UN Security Council were to be assigned the task of providing guidance to the verification field force it would be natural for it to be assigned the further role of serving as the guarantee forum. The principal objections to its serving as the guarantee forum would presumably have been overcome in the course of reaching agreement that it would play a key role in verification.

For a discussion of the considerations involved in establishing effective verification machinery, see the paper on verification in this series.

VI. Role Of International Guarantees In Various Aspects Of A Settlement

International guarantees of such elements of a settlement as cease-fire, withdrawal and a prohibition on reinfiltration would be of primary interest to the GVN and may be helpful in getting the GVN to be forthcoming in the negotiations. International guarantees of internal political settlement on the other hand will be of primary interest to the NLF and NVN and might at some point be of some use in persuading them to accept the uncertainties of a compromise solution. Conversely the GVN might oppose any serious international guarantees of a political settlement, fearing that they could inhibit its freedom to advance its power position within South Viet-Nam.

SECRET

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151. Withdrawal

Probably the most effective sanction against a violation of a settlement's provision on withdrawal is reciprocity -- particularly the ability of one power to halt its own withdrawal if it believes that the opposing power is not carrying out its withdrawal obligations.

Guarantee arrangements can be a useful supplement to this sanction, however. In particular the publicity that can be provided to charges that the other side has failed to carry out withdrawal, or preferably to a finding to this effect by the verification body or even to its complaint that it has been denied access to withdrawal areas, can facilitate a decision to suspend one's own withdrawal. Furthermore, the ability to focus public attention on violations of the withdrawal arrangements could itself be a useful deterrent to such violations.

2. Cease-Fire

Reciprocity, in the sense of appropriate military counter-measures, can also be an effective sanction against violation of the cease-fire arrangements. However, if major violations occur after U.S. troops have been withdrawn and South Vietnamese forces are unable to cope with the violations, it would obviously be more difficult to mount effective reciprocal actions than where withdrawal may simply be suspended.

~~SECRET~~

SECRET

16

Thus the role of guarantees may be even more important in the case of cease-fire than of withdrawal. Beyond the opportunities for exposure, the guarantee forum would provide a multilateral channel in which to negotiate a return to the cease-fire, to attempt to concert pressure on the cease-fire violators, and if necessary, to lay a basis for outside assistance.

3. Re-infiltration

Once mutual withdrawal has been completed, reinfiltration of North Vietnamese troops is a serious danger. It would pose more troublesome problems than a violation of the withdrawal provisions which could be met with a suspension of scheduled American withdrawals. Reciprocity, in the sense of reintroduction of American troops, would be theoretically available in the case of reinfiltration of North Vietnamese troops but its likelihood as a practical matter would depend very much on the circumstances at the time. However, "reciprocity" in the form of other military measures, such as air and naval actions against NVN, should be considered among the options available for action.

The guarantee forum could play an important role in focusing world attention on the re-infiltration and in laying a basis for increased outside assistance.

4. Demilitarized Zone

The introduction of North Vietnamese troops into the northern portion of a restored DMZ would probably lead

SECRET

SECRET

17

to the introduction of South Vietnamese troops into the southern portion and vice versa. A functioning guarantee forum could serve as a vehicle for negotiating a drawback on both sides. If this was unsuccessful, probably nothing further would be done until the situation deteriorated into violation of the cease-fire and re-infiltration provisions.

5. Internal Political Settlement

An internal political settlement might contain the following principal elements:

- machinery for carrying out free elections;
- rights of free speech and political organization;
- a general amnesty.

Guarantee arrangements such as those described above would provide a forum in which violation of the provisions of a political settlement could be aired and discussions held on how best to assure compliance. The guarantee forum would be a safety valve for political grievances and might lead to effective diplomatic pressures against those responsible.

The guarantee arrangement would in effect charge non-Vietnamese parties with some responsibility for seeing that the political settlement provisions were carried out. These outside parties would have their own interests at stake in seeing the settlement carried out. Whereas the Vietnamese

SECRET

~~SECRET~~

18

parties are likely to be almost exclusively concerned with the protection and extension of their power at the expense of their rivals, some of the guarantor powers will feel their good faith to be at stake in the fair carrying out of the arrangements.

To the extent that the NLF and the DRV can be persuaded that the U.S. will have an independent interest in seeing the political settlement provisions carried out fully and fairly, even if fulfillment of these provisions were to the detriment of the power position of the GVN, the more, presumably, they will be prepared to accept a political compromise with the GVN. However, the Communists will undoubtedly be most suspicious of the efficacy of any international guarantee of a political settlement. They will doubt that the western powers would be interested in pressuring the GVN, and will assume that in any event force would not be used.

VII. Possible Disadvantages Of International Guarantees

A possible disadvantage to the conclusion of international guarantee arrangements might be that they would limit the opportunities for action outside the terms of the arrangements. However, previous experience indicates that this is not a real problem. Where the guarantee arrangements have proven ineffective, as in the case of Laos, the United States has not been prevented from engaging in bilateral actions in response to violations.

~~SECRET~~

SECRET
19

Indeed, a demonstration that diplomatic opportunities have been exhausted, as through efforts to reconvene a conference, can lay the basis for rendering additional assistance.

VIII. Negotiation Possibilities

International guarantee arrangements of the sort described above obviously cannot be concluded in the limited confines of the Paris Talks. At some point, the additional guarantor powers must be brought into a broadened conference.

However, if the prospect of reasonably effective international guarantee arrangements can affect the willingness of the primary parties to reach a compromise settlement, it would be appropriate and desirable to introduce the subject of guarantee arrangements into the Paris forum. It may well be that at least the outline of such arrangements would have to be established before the parties were ready to define their primary obligations. Moreover, these parties might not wish to assume all of their primary obligations until the guarantee arrangements were ready for entry into force.

This suggests that the obligations of the primary parties and the guarantee arrangements cannot be neatly separated, with the former to be concluded at the Paris Talks and the latter at a subsequent larger conference. Rather, the most likely scenario might be for the Paris Talks to define simultaneously the obligations of the primary parties and at least the outline of guarantee arrangements, and then

SECRET
20

for a laeager conference to be called that would make final both sets of arrangements.

IX. Major Conclusions

1. Guarantee arrangements whose terms are such as to promise effectiveness can be useful to a settlement in four ways:

- a) induce the parties to accept the primary undertakings;
- b) deter violations;
- c) provide a means for negotiating a return to the settlement;
- d) provide a basis for seeking to enforce the settlement.

2. We should strive for a form of guarantee arrangement that would as clearly as possible place responsibility for encouraging the carrying out of the settlement on the guarantor powers. This is best done through a formal, signed, international agreement among the parties.

3. We should seek to include as guarantor parties all powers that are in a position to disrupt a settlement, to contribute to its enforcement, or to play a useful bridging role between the major opposing powers. These criteria encompass Communist China as well as the Soviet Union.

4. We should seek provisions that would make it relatively easy to convene a forum of representatives of the guarantor powers.

SECRET

SECRET

21

5. The forum should be able to take procedural actions and make recommendations by majority vote. These recommendations would not be binding on the parties since agreement on any other arrangement would be impossible to achieve.

6. The primary undertakings and the guarantee arrangements cannot be negotiated wholly apart from one another, the first in a restricted and the latter in a larger conference. Since the guarantee arrangements will bear on what the parties are willing to accept in the way of primary obligations, at least the outline of the guarantee arrangements will probably have to be clear before the primary undertakings can be concluded.

SECRET

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